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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/802,415

03/17/2004

Dai Kimura

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BINGHAM MCCUTCHEN LLP  
2020 K Street, N.W.  
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EXAMINER

CUMMING, WILLIAM D

ART UNIT

PAPER NUMBER

2617

MAIL DATE

DELIVERY MODE

03/17/2008

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/802,415	<b>Applicant(s)</b> KIMURA, DAI	
	<b>Examiner</b> WILLIAM D. CUMMING	<b>Art Unit</b> 2617	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 04 January 2008.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-8 AND 10-18 is/are pending in the application.  
     4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 8 and 10 is/are allowed.
- 6) ☒ Claim(s) 1,3,5-7,11 and 13-18 is/are rejected.
- 7) ☐ Claim(s) 2,4 and 12 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
     a) ☒ All    b) ☐ Some \*    c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                       | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. _____                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

**DETAILED ACTION**

***Allowable Subject Matter***

1. The indicated allowability of claims 1, 3, 5-7, 11, and 13-18 is withdrawn in view of the newly and late filing of an Information Disclosure Statement. Rejections based on the newly cited reference(s) follow.
2. Claims 8 and 10 are allowed.
3. As allowable subject matter has been indicated, applicant's reply must either comply with all formal requirements or specifically traverse each requirement not complied with. See 37 CFR 1.111(b) and MPEP § 707.07(a).
4. Claims 2, 4, and 12 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

***Claim Rejections - 35 USC § 102***

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

6. Claims 1, 3, 5-7, 11, and 13-18 are rejected under 35 U.S.C. 102(e) as being clearly anticipated by **Gollamudi, et al.**

**Gollamudi, et al** disclose a radio communication apparatus in a radio packet communication system for feeding back radio link quality information, which has been measured on a packet receiving side, to a transmitting side and adaptively controlling a modulation scheme and/or encoding rate on the transmitting side using the quality information (paragraphs 4, 6, and 7), comprising estimating means for estimating a variation-with-time characteristic of the radio link quality using the radio link quality information reported by the packet receiving side (paragraph 16, etc.). Changeover means for adaptively changing over a target error rate using the variation-with-time characteristic (paragraph 17, etc). Deciding means for deciding a modulation scheme and/or encoding rate, “*in such a manner*” that packet error rate becomes equal to the target error rate, using the radio link quality information as well as reception success/failure information reported by the packet receiving side (paragraph 21, etc.)

and means for transmitting a packet based upon the modulation scheme and/or encoding rate decided (paragraph 22).

### ***Response to Arguments***

7. Applicant's arguments with respect to claims 8 and 10 have been considered but are moot in view of the new ground(s) of rejection.

### ***Conclusion***

8. If applicants wish to request for an interview, an *"Applicant Initiated Interview Request"* form (PTOL-413A) should be submitted to the examiner prior to the interview in order to permit the examiner to prepare in advance for the interview and to focus on the issues to be discussed. This form should identify the participants of the interview, the proposed date of the interview, whether the interview will be personal, telephonic, or video conference, and should include a brief description of the issues to be discussed. A copy of the completed *"Applicant Initiated Interview Request"* form should be attached to the Interview Summary form, PTOL-413 at the completion of the interview and a copy should be given to applicant or applicant's representative.

## 9. NOTICES REGARDING CLAIMS AND CONTINUATIONS RULES

### **Rules and Clarifications Not Effective on November 1, 2007.**

The United States Patent and Trademark Office (USPTO) published a final rule notice in the Federal Register to revise the rules of practice in patent cases relating to continuing applications and requests for continued examination practices, and for the examination of claims in patent applications. See *Changes to Practice for Continued Examination Filings, Patent Applications Containing Patentably Indistinct Claims, and Examination of Claims in Patent Applications*, 72 Fed. Reg. 46716 (Aug. 21, 2007) (Claims and Continuations Final Rule). The final rule notice published in the Federal Register indicates that the effective date for the changes to the rules of practice in the Claims and Continuations Final Rule is November 1, 2007. **Additionally, on November 6, 2007, a notice entitled "Clarification of the Transitional Provisions Relating to Continuing Applications and Applications Containing Patentably Indistinct Claims" will publish in the Office Gazette (OG). This notice was originally posted on the USPTO's Web site on October 10, 2007, but because of the normal three to four week publication delay for OG notices is now just appearing.** On October 31, 2007, the United States District Court for the Eastern District Court of Virginia issued a Preliminary Injunction enjoining the USPTO from implementing the changes in the Claims and Continuations Final Rule. **Therefore, the changes to the rules of practice in the Claims and Continuations Final Rule, including the October 10 clarifications, will not go into effect on November 1, 2007.** USPTO employees are to continue processing and examining patent applications under the rules and procedures in effect on October 31, 2007, until further notice.

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to **WILLIAM D. CUMMING** whose telephone number is **571-272-7861**. The examiner can normally be reached on Monday-Thursday, 11:00am-8:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Charles Appiah can be reached on 571-272-7904. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

11. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/WILLIAM D CUMMING/  
Primary Examiner  
Art Unit 2617



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PATENT AND  
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